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DEPARTMENT OF STATE
Washington, D.C. 20520

APRIL 8 1981

Dear Mr. Edwards:

This is in response to your letters of January 29 and February 12, 1981, to the Department of State requesting the report prepared by the Office of the Legal Adviser concerning the trial of Kim Dae Jung in the Republic of Korea. This report was prepared following the return of Mr. Jeffrey Smith of the Office of the Legal Adviser who served as the U.S. trial observer during the Kim trial.

We appreciate your interest in the Kim Dae Jung trial. As you know, Mr. Smith has informed Mr. Robert Townsend of your staff that he and a representative of the Office of Korean Affairs would be happy to brief you on the trial and its implications for U.S.-Korean relations and to make the report available for you to read. Mr. Townsend informed Mr. Smith that you wished instead to pursue your request under the Freedom of Information Act.

Responsible officers of the Department of State have reviewed the report. We have concluded that its unauthorized release could reasonably be expected to cause at least identifiable damage to the national security and that, therefore the report must remain classified. As such, it is exempt from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. 552(b)(1). Moreover, portions of the report consist of legal analysis and conclusions which would not be available by law to a party other than an agency in litigation with this Department. Portions of the report are therefore also exempt from disclosure pursuant to 5 U.S.C. 552(b)(5).

We regret that we cannot agree to declassify the report but wish to reiterate our willingness to make it available to you to read and have Mr. Smith and a representative of the Office of Korean Affairs brief you on the trial.

The Honorable
Don Edwards,
House of Representatives.

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY HT DATE 8/18/8
RDS ☐ or XDS ☐ EXT. DATE
TS AUTH. REASON(S)
DCRSE EXISTING MARKINGS ☐
DECLASSIFIED ☐ RELEASABLE ☒
RELEASED NIED ☐
FOIA or PA EXEMPTIONS

The decision that the report must remain classified may be appealed to the Chairman of the Appeals Panel of the Department of State pursuant to Section 171.60, Title 22, Code of Federal Regulations. For your information, a copy of this Regulation is enclosed.

Sincerely,

GW

Richard Fairbanks
Assistant Secretary
for Congressional Relations

Enclosure:

Copy of Regulation

APPEALS OF DENIAL OF ACCESS

(a) Review of an initial denial of access to a record under the Freedom of Information Act (5 USC 552), the Privacy Act of 1974 (5 USC 552a), or Executive Order 12065 may be requested by the individual who submitted the initial request for access. The review (hereinafter referred to as the appeal) must be in writing and should be sent certified mail to the Assistant Secretary for Public Affairs, Chairman, Appeals Review Panels, Department of State, 2201 C Street, N.W., Washington, D.C. 20520. The appeal should be received within 60 days of the date of the Department's refusal to grant access to a record in whole or in part.

(b) The time for decision on the appeal begins on the date the appeal is received by the Chairman, Appeals Review Panels. The appeal of a denial of access to records shall include any documentation, information and statements to support the individual's request for access and to refute the use of the exemption(s) cited in the Department's justification concerning the denial of access.

(c) The Chairman of the Appeals Review Panel or his designee and at least two other members of Panels designated by him shall constitute a panel to consider and decide the appeal; there shall be a written record of the reasons for the final determination. The final determination will be made within 30 days (excluding Saturdays, Sundays, and legal public holidays), unless for good cause shown, the Chairman of the Appeals Review Panels extends such determination beyond the 30 day period.

(d) When the final determination is to grant access to the record in accordance with the individual's request, the Chairman of the Appeals Review Panel shall inform the office responsible for the record of its decision. The Chairman shall then request the Information and Privacy Coordinator to notify the individual in writing of the Panel's decision to grant access and at the same time to inform the individual of the Department's regulations concerning access. The individual shall choose the means of access most convenient to her or him.

(e) When the final decision of the Panel is to refuse to grant an individual access to a record, the Chairman of the Panel shall advise the individual in writing:

(1) of the refusal to grant the appeal and the reasons therefor including the exemptions of the Freedom of Information Act, the Privacy Act of 1974, and Executive Order 12065 under which access is denied;

(2) of her of of his right to seek judicial review of the Department's decision.